IN THE HIGHCOURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7215 OF 2006

Shri.Daulat M. Bagul .. Petitioner
V/s.
The State of Maharashtra & Ors. .. Respondents.

Shri.P.K.Dhakephalkar with Shri.S.M.Sabrad for the petitioner.
Shri.C.R.Sonawane, A.G.P. for respondent No.1

CORAM : A.P.DESHPANDE,J.
DATED : 13th November, 2006.

P.C.

The petitioner is an elected member of Malegaon Panchayat Samithi. In February, 2002, the respondent No.2 lodged a complaint with the Divisional Commissioner, Nashik by contending that the petitioner is disqualified to continue as a member of the Panchayat Samithi on account of disqualification under Section 16(1)(n) of the Maharashtra Zilla Parishad & Panchayat Samithi Act, 1961 as he has more than two children. The petitioner disputed that he has three children and hence the Commissioner directed an enquiry to be made by subordinate officers. The officers so deputed obtained the necessary evidence in the form of a certificate maintained under birth and death

register. Mainly relying upon the entry in the said register, the finding of fact is recorded that the petitioner has in fact more than three children and hence he is disqualified to be a member of the Panchayat Samithi. It is this order of the Commissioner that is challenged by filing the present writ petition by the petitioner. The learned counsel for the petitioner contended that the elected representative of the people cannot be unseated by holding an enquiry from the deputies by the Commissioner as the evidence so collected by the deputies would not be primary evidence and would be far fetched hear say evidence. He also objected to the manner of conducting an enquiry by the Commissioner by contending that no known procedure known to law has been followed and thereby right to cross examine the witnesses also stands denied. On these grounds, the learned counsel challenges the order passed by the Commissioner. The learned A.G.P. on the other hand appearing for the respondent No.1 has pointed out that subordinate officer was directed to make a fact finding at the place where the petitioner ordinarily resides and the subordinate officer has

only facilitated production of the record which is maintained in ordinary course by Public Authority for perusal of the Commissioner. The record mainly is from the birth and death register. The commissioner while deciding the question of disqualification under Section 16(1)(n), is supposed to only make a fact finding as to whether the member has more than two children or not? In the submission made by the learned counsel for the respondent, the only reliable and authentic evidence touching the birth of a child would be in the form of an entry in the birth and death register and the Commissioner has relied on the said evidence. The learned counsel for the respondent submits that the disqualification under Section 16(1)(n) is inserted with a view to achieve the social object of population control and the same is in a larger interest. It is submitted that even if the procedure followed by the Commissioner for conducting an enquiry is found to be defective or irregular that could not be a ground to entertain the present petition, in discretionary jurisdiction under Article 227 of the Constitution of India, the Commissioner has decided the issue by

relying on the basis of material and evidence on record. I do not propose to interfere with the said order. In the result, the writ petition is summarily rejected.

(A.P.DESHPANDE,J)